

**Introduced by Senator Speier**

February 18, 2005

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~~An act to add Section 760 to the Financial Code, relating to banks.~~  
*An act to amend Section 1798.84 of, and to add Title 1.805 (commencing with Section 1798.79) to Part 4 of Division 3 of, the Civil Code, relating to personal information.*

LEGISLATIVE COUNSEL'S DIGEST

SB 550, as amended, Speier. ~~Bank account numbers~~ Data brokers.

*(1) Existing law generally regulates a business that discloses personal information about a California resident to 3rd parties.*

*This bill would further regulate a data broker, which would be defined as a commercial entity that collects, assembles, or maintains personally identifiable information about a California resident for the sale or transmission of, or provision of access to, that information to any 3rd party. The bill would, among other things, authorize a California resident to request that his or her personally identifiable information, as defined, be excluded from any report prepared by a data broker, and would require a data broker to inform that resident every time the broker issues a report containing that information. The bill would further require every data broker to allow every California resident the right to obtain disclosure of all personally identifiable information pertaining to that individual held by the broker, and to be informed of the identity of each person or entity that procures that information from the broker. The bill would require the prompt correction of errors in any report, and, upon a breach of security of an individual's information, would require the data broker to pay for a security freeze of that individual's credit reports. The bill would provide for specified penalty provisions and injunctive relief.*

(2) Existing law requires a business to take all reasonable steps to destroy, or arrange for the destruction of, a customer's records within its custody or control that contains personal information. Existing law further regulates the disclosure of personal information about a California resident to 3rd parties, and requires any person or business that conducts business in California, and that owns or licenses computerized data that includes personal information, to disclose to those individuals a breach of its security system. Existing law provides a private cause of action to a customer, as defined, who is injured by a violation of the above provisions.

This bill would provide that cause of action to any individual who is injured by a violation of the above provisions.

~~Existing law provides for the regulation of banks by the Department of Financial Institutions.~~

~~This bill would require a bank to maintain certain procedures if the bank issues customer account numbers that were previously held by other customers.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 760 is added to the Financial Code, to~~  
2     ~~read:~~

3     SECTION 1. Title 1.805 (commencing with Section 1798.79)  
4     is added to Part 4 of Division 3 of the Civil Code, to read:

5  
6                     TITLE 1.805. DATA BROKERS

7  
8     1798.79. For purposes of this title:

9     (a) "Data broker" means a commercial entity that collects,  
10    assembles, or maintains personally identifiable information  
11    about a California resident for the sale or transmission of, or the  
12    provision of access to, that information to any third party,  
13    whether that collection, assembly, or maintenance is performed  
14    by the data broker directly or by contract or subcontract with  
15    any other entity.

16    (b) "Individual" means a natural person residing in  
17    California.

1 (c) “Personally identifiable information” means any  
2 information that identifies, relates to, describes, or is capable of  
3 being associated with, a particular individual, including, but not  
4 limited to, his or her name, signature, social security number,  
5 physical characteristics or description, address, telephone  
6 number, passport number, driver’s license or state identification  
7 card number, insurance policy number, education, employment,  
8 employment history, bank account number, credit card number,  
9 debit card number, or any other financial information.

10 1798.79.2. (a) Every individual may request that his or her  
11 personally identifiable information be excluded from any report  
12 prepared by a data broker. Every data broker shall establish a  
13 notification system, including, but not limited to, a toll-free  
14 telephone number, through which an individual can provide  
15 notice to that broker that the individual’s personally identifiable  
16 information shall be excluded therefor. The data broker shall be  
17 prohibited from disclosing that personally identifiable  
18 information after receipt of that notice, except that no penalty  
19 shall be imposed for any disclosure made within five business  
20 days after the notice if the data broker proves that the data was  
21 disclosed in response to a request received prior to receipt of the  
22 election and the data broker took all reasonable steps to prevent  
23 disclosure.

24 (b) Whenever a data broker issues a report containing  
25 personally identifiable information, except for a report issued to  
26 a government agency or pursuant to a court order, the data  
27 broker shall send a written notice to the individual who is the  
28 subject of the report. That notice shall provide the name and  
29 address of the person or entity who requested the report, and  
30 shall advise the data subject that he or she has a right to receive  
31 a copy of the report and to have all personally identifiable  
32 information excluded from future reports.

33 (c) Every data broker shall allow every individual the right to  
34 obtain disclosure of all personally identifiable information  
35 pertaining to the individual held by the broker, and to be  
36 informed of the identity of each person or entity that procures  
37 any personally identifiable information from the broker.

38 (d) Every data broker shall allow every individual the right to  
39 request and receive prompt correction of errors in personally  
40 identifiable information held by the broker.

1     (e) Upon request of an individual, a data broker shall provide  
2     the name and address of any recipient of a report about the  
3     individual provided within the prior 12 months.

4     1798.79.4. In the event of a breach in information security by  
5     a data broker that holds an individual's personally identifiable  
6     information, the data broker shall pay for a security freeze of  
7     that individual's credit reports pursuant to Section 1785.11.2.

8     1798.79.6. (a) For a willful, intentional, or reckless violation  
9     of this title, an individual may recover a civil penalty not to  
10    exceed three thousand dollars (\$3,000) per violation. Otherwise,  
11    the individual may recover a civil penalty of up to five hundred  
12    dollars (\$500) per violation for a violation of this title.

13    (b) Any data broker that violates, proposes to violate, or has  
14    violated this title may be enjoined.

15    (c) The rights and remedies available under this section are  
16    cumulative with each other and with any other rights and  
17    remedies available under law.

18    SEC. 2. Section 1798.84 of the Civil Code is amended to  
19    read:

20    1798.84. (a) Any waiver of a provision of this title is  
21    contrary to public policy and is void and unenforceable.

22    (b) Any customer or individual whose personal information is  
23    disclosed who is injured by a violation of this title may institute a  
24    civil action to recover damages.

25    (c) In addition, for a willful, intentional, or reckless violation  
26    of Section 1798.83, a customer may recover a civil penalty not to  
27    exceed three thousand dollars (\$3,000) per violation; otherwise,  
28    the customer may recover a civil penalty of up to five hundred  
29    dollars (\$500) per violation for a violation of Section 1798.83.

30    (d) Unless the violation is willful, intentional, or reckless, a  
31    business that is alleged to have not provided all the information  
32    required by subdivision (a) of Section 1798.83, to have provided  
33    inaccurate information, failed to provide any of the information  
34    required by subdivision (a) of Section 1798.83, or failed to  
35    provide information in the time period required by subdivision  
36    (b) of Section 1798.83, may assert as a complete defense in any  
37    action in law or equity that it thereafter provided regarding the  
38    information that was alleged to be untimely, all the information,  
39    or accurate information, to all customers who were provided  
40    incomplete or inaccurate information, respectively, within 90

1 days of the date the business knew that it had failed to provide  
2 the information, timely information, all the information, or the  
3 accurate information, respectively.

4 (e) Any business that violates, proposes to violate, or has  
5 violated this title may be enjoined.

6 (f) A prevailing plaintiff in any action commenced under  
7 Section 1798.83 shall also be entitled to recover his or her  
8 reasonable attorney's fees and costs.

9 (g) The rights and remedies available under this section are  
10 cumulative to each other and to any other rights and remedies  
11 available under law.

12 ~~760. Banks issuing customer account numbers that were~~  
13 ~~previously held by other customers shall maintain the following~~  
14 ~~procedures:~~

15 ~~(a) In the case of a check that is drawing on a recycled account~~  
16 ~~number, a bank shall, with a reasonable degree of certainty,~~  
17 ~~match at least three categories of identifying information within~~  
18 ~~the file maintained by the bank on the customer with the~~  
19 ~~information provided on the check. The categories of identifying~~  
20 ~~information may include, but are not limited to, first and last~~  
21 ~~name, month and date of birth, driver's license number, place of~~  
22 ~~employment, current residence address, previous residence~~  
23 ~~address, or social security number.~~

24 ~~(b) At the time an account is opened using a number~~  
25 ~~previously held by a different customer, a bank shall provide the~~  
26 ~~customer with a clear and conspicuous written notification of that~~  
27 ~~fact. In the case of an existing account that is using an account~~  
28 ~~number that was previously held by a different customer, a bank~~  
29 ~~shall, by January 1, 2007, provide customers with a separate clear~~  
30 ~~and conspicuous written notification of that fact.~~